

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF NORTH CAROLINA  
WESTERN DIVISION

No. 5:09-CR-104-F-2

No. 5:12-CV-92-F

JONATHAN JORDAN,	)
	)
Petitioner,	)
	)
v.	)
	)
UNITED STATES OF AMERICA,	)
	)
Respondent.	)

This matter is before the court on Objections [DE-155] to the Memorandum and Recommendation [DE-145] of United States Magistrate Judge Kimberly A. Swank, regarding the Government's Motion to Dismiss [DE-109] both Jonathan Jordan's Motion to Vacate, Set Aside, or Correct Sentence pursuant to 28 U.S.C. § 2255 [DE-105] and his Motion for Alternative Relief under 28 U.S.C. § 2241 and 28 U.S.C. § 1651.

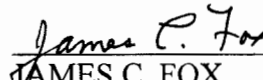
Jordan's Objections raise issues implicated by *Whiteside v. United States*, 748 F.3d 541 (4th Cir. 2014). In *Whiteside*, a Fourth Circuit Court of Appeals panel held that challenges to the career offender enhancement are cognizable in a section 2255 motion. *Id.* at 545-46. Additionally, the court applied the equitable-tolling doctrine to conclude that Whiteside's motion was timely, even though it was filed more than one year after his conviction became final. *Id.* at 546. The court's holding allowed Whiteside to receive the benefit of the decision in *United States v. Simmons*, 649 F.3d 237 (4th Cir. 2011), which revealed that the career offender enhancement was inapplicable to Whiteside. 748 F.3d at 546.

On July 10, 2014, the Fourth Circuit granted the Government's petition for rehearing en banc in *Whiteside*. See *Whiteside v. United States*, 578 F. App'x 218 (4th Cir. 2014). Therefore, the panel opinion in *Whiteside* has been vacated. See 4th Cir. Loc. R. 35(c); *Richmond Med. Ctr. For Women v. Herring*, 570 F.3d 165, 168 (4th Cir. 2009) (en banc).

The court believes that resolution of *Whiteside* will have great bearing on the resolution of this case. Furthermore, the court finds that the interests of justice, efficiency, and judicial economy will be promoted by staying this case pending the outcome of *Whiteside*. Therefore, this case is STAYED pending the issuance of the en banc ruling in *Whiteside*.

SO ORDERED.

This, the 8<sup>th</sup> day of December, 2014.

  
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JAMES C. FOX  
Senior United States District Judge